

OPINION
56-90

April 24, 1956 (OPINION)

OFFICERS

RE: Incompatibility - Police Magistrate and City Assessor

In your letter of April 20, 1956, you request an opinion as to whether the offices of police magistrate and city assessor can be legally held by the same person.

A case study reveals no common law incompatibility in the offices of city assessor and police magistrate. Likewise, a search of the statutes does not disclose any statutory incompatibility between the two. It is interesting to note, however, that under section 12-1009 of the Code, one who makes a false statement regarding his taxes is guilty of a misdemeanor. It is manifestly possible for a police magistrate in his capacity as ex officio justice of the peace, to sit on a case in which one has been charged with a misdemeanor under the statute cited, while as city assessor the same police magistrate may have been the assessor to whom the false statement was made. The incompatibility cases generally are based, in situations involving judges, upon the reasoning that a judge must be free to exercise judicial discretion without restraint. Having assessed a tax against one who was subsequently charged with making a false statement to the assessor, and then later having decided the same case as judge might well indicate incompatibility. Even in this instance, though, there is the saving factor of the right of a defendant to file an affidavit of prejudice. Thus the possibility of incompatibility in the instance cited would be taken care of by the exercise of the defendant's statutory rights.

No other examples of possible incompatibility coming to mind, it is the opinion that the offices of city assessor and police magistrate be held by the same person.

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